

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VALYN BURRELL)	
Claimant)	
VS.)	
)	Docket No. 267,674
RED HOT & BLUE RESTAURANT)	
Respondent)	
AND)	
)	
INSURANCE COMPANY)	
STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the September 17, 2001 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

This is a claim for bilateral upper extremity injuries as the result of repetitive mini-traumas sustained while working for respondent through June 24, 2001. The only issue presented to the Judge at the preliminary hearing was whether claimant provided respondent with timely notice of accident. Respondent and its insurance carrier argued to the Judge that claimant should only receive workers compensation benefits for the right upper extremity as claimant failed to timely notify respondent of the left upper extremity injury.

In the September 17, 2001 preliminary hearing Order, Judge Barnes determined "that the notice requirements as set forth in K.S.A. 44-520 were satisfied" regarding claimant's left carpal tunnel syndrome.

Respondent and its insurance carrier contend Judge Barnes erred. They argue claimant was required to provide respondent with notice of an accidental injury involving the left arm within 10 days of claimant's last day of work on June 24, 2001. Respondent and its insurance carrier also argue that claimant failed to establish just cause for failing to report the left upper extremity injury within 10 days of the last day of work, which would extend the notice period from 10 days to 75 days.

Conversely, claimant contends the Order should be affirmed. Claimant first argues that she gave respondent timely notice of the repetitive use injury involving the right upper extremity and such notice was sufficient as the law does not require that she list each and every body part that might have sustained injury from an occupational accident. In the alternative, claimant argues that she had just cause for failing to report the left arm injury within 10 days of her last day of work.

The only issue before the Board on this appeal is whether claimant provided respondent with timely notice of the accidental injury.

FINDINGS OF FACT

The facts are not in dispute. At the September 4, 2001 preliminary hearing, the parties requested the Judge to enter the preliminary hearing award based upon the exhibits introduced at the hearing and the following stipulated facts:

1. Claimant worked full-time for respondent as a waitress/bus person/hostess with her last day of work being June 24, 2001.
2. Claimant developed right-sided and left-sided carpal tunnel syndrome on each working day through June 24, 2001, as a result of her repetitious work activities.
3. Claimant gave respondent verbal notice in November 2000, February 2001, and May 2001 of the accident involving overuse of her right arm. And that notice was timely and appropriate.
4. It was not until after the third notice in May 2001 that claimant was referred for authorized medical care and evaluation.
5. At about the time of claimant's last day of work, or within a day or two of that (June 24 through June 26, 2001), claimant began noticing symptoms in her left arm and brought a written claim for compensation from her attorney's office addressing bilateral injury, which was received by respondent on July 13, 2001.
6. An amended E-1 (Application for Hearing) reflecting a bilateral upper extremity condition was filed in the Director's office on July 20, 2001.
7. Claimant's treatment began with Kansas Orthopaedic Center with a June 26, 2001 examination by Dr. Prince Chan. In the first page of those notes, there is a reference to both hands being symptomatic, although claimant could not recall when she testified at an earlier discovery deposition whether both hands were symptomatic at that time or not. The same records reveal that bilateral EMG studies were ordered by Dr. Chan and performed on approximately July 1, 2001.

8. Dr. Chan met with claimant on July 9, 2001, to report to her that she had bilateral carpal tunnel syndrome.

9. Claimant admitted in her discovery deposition that she had not told her employer about any problems with her left upper extremity before her last day of work. Respondent first received notice of the left upper extremity problem on July 13, 2001, and that notice was through her attorney's office.

In addition to the above stipulated facts, the Board makes the following findings for preliminary hearing purposes:

10. When claimant saw Dr. Chan on June 26, 2001, her chief complaint was a soft tissue mass in the volar radial aspect of her right wrist that was very tender with numbness and tingling in the right hand. The only reference to left hand complaints in the doctor's June 26, 2001 new patient evaluation report is a reference that claimant's hands will go to sleep when she drives and when she writes. The report contains specific findings from examining the right upper extremity and wrist but does not contain specific findings that would indicate the doctor closely examined the left upper extremity.

11. As a result of the initial examination, Dr. Chan's impression was that claimant had a soft tissue mass that was consistent with a ganglion cyst and that claimant had first-time hand numbness and tingling consistent with a median nerve neuropathy at the wrist. The doctor's impression as shown in the June 26, 2001 report does not indicate that claimant's upper extremity problems were bilateral. The report reads:

IMPRESSION:

1. Soft tissue mass on the right wrist consistent with a ganglion cyst.
2. First-time hand numbness and tingling consistent with a median nerve neuropathy at the wrist.

ASSESSMENT/PLAN: I had a long, thorough discussion with the patient [claimant] concerning her soft tissue mass and numbness and tingling. The patient states that the soft tissue mass is causing her a lot of problems, and she wants this to be removed. I did inform the patient that the numbness and tingling she is having is comparable with a median nerve entrapment at the wrist, and I would like to further evaluate this before any surgery and to obtain an EMG/nerve conduction study to rule out any neuropathy. After the study has been done, I will see with her back in clinic to discuss our treatment options. I did inform the patient that if she does have a moderate to severe case of carpal tunnel syndrome, we can take care of the soft tissue mass excision as well [as] the carpal tunnel release at the same time. She seems to understand and is rather pleased with the evaluation and care.

CONCLUSIONS OF LAW

The preliminary hearing Order should be affirmed.

The Workers Compensation Act requires workers to give notice of their accidental injury within 10 days of when it occurs. But that 10-day period may be extended to 75 days if the worker has just cause for failing to notify the employer within the initial 10-day period following the accident. Further, the employer's actual knowledge of the accident renders the giving of such notice unnecessary.¹

Claimant provided respondent with timely notice of her repetitive use injuries for two reasons. The notice provided to respondent on numerous occasions before leaving work on June 24, 2001 was sufficient to inform respondent that claimant had possibly sustained a work-related accident and injuries. Claimant had conveyed to respondent sufficient information for it to reasonably conclude that claimant had sustained, or was continuing to sustain, a work-related accident that involved at least the right upper extremity.

The Board has held in the past, and continues to hold, that an injured worker is neither required to diagnose his or her condition nor list each and every affected body part before satisfying the notice requirements set forth in K.S.A. 44-520. Generally, notice to the employer of either the accident or the accidental injury is sufficient.

As the parties stipulated that claimant's bilateral carpal tunnel syndrome developed as a result of claimant's repetitious work activities, the Board concludes that the bilateral carpal tunnel injury should be treated as one accident rather than two separate and individual accidents. Therefore, the notices to respondent of the work-related accidental injury that was then affecting only the right upper extremity suffices for notice of accident for any other injuries that were being caused by the repetitive injury-producing work activity.

Further, claimant had just cause that would have excused any requirement to notify respondent of the left arm symptoms within 10 days of the last day of work on June 24, 2001, if the law required that the left upper extremity injury be treated as a separate and distinct accident. As indicated by the medical records introduced at the preliminary hearing, claimant's primary complaints when she saw Dr. Chan were the soft tissue mass on the right wrist and numbness and tingling in that extremity. The medical records are unclear what complaints claimant may have had in the left upper extremity at the June 26, 2001 examination. The Board is aware that the June 26, 2001 office notes make reference to claimant's hands going to sleep while driving and writing. But those same notes lack any other reference to left upper extremity symptoms or specific reference to the doctor examining the left upper extremity as exists for the right upper extremity.

¹ See K.S.A. 44-520.

The Board concludes that claimant's left upper extremity complaints as of the June 26, 2001 examination were relatively minor, if any. It is reasonable to conclude that claimant was not aware that she had injured her left upper extremity until July 9, 2001, when Dr. Chan reported the results of the nerve conduction studies and advised her that she had moderate bilateral carpal tunnel syndrome. Because claimant was not aware until approximately July 9, 2001, that she also probably had injured her left upper extremity while working for respondent, there was just cause that would have extended the time for providing notice of the accidental injury from 10 days to 75 days from the last day that the repetitive mini-traumas were sustained, if the left upper extremity injury should be treated as a separate and distinct accident.

The Board affirms the Judge's conclusion that claimant provided respondent with timely notice of the accidental injury.

WHEREFORE, the Board affirms the September 17, 2001 Order entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

c: Kelly W. Johnston, Attorney for Claimant
P. Kelly Donley, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Workers Compensation Director